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TO: EMEA Regional Executive Committee DATE: 14 July 1997
FROM: Nathan G. Knight, Jr. *NK* EREC 97-030
RE: EU Proposal on Legal Protection for Conditional Access Services
NUMBER OF PAGES INCLUDING COVER: 3

ACTION: No. For your information.

SUMMARY: Please see attached report from Harvey Rouse to MPA Special Policy Group. The EU Commission is proposing legislation to protect services supplied on a conditional access basis, including new services such as video-on-demand. The MPA will prepare comments on the proposal and seek to strengthen its copyright protections.

Kind regards.

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AND

ISSUE:

The European Commission adopted today a proposal for an EU directive on "The Legal Protection of Services based on, or consisting of, Conditional Access"

DETAILED DISCUSSION:

This proposed legislation aims to protect on-line service suppliers from illegal piracy by illicit decoders, smart cards or other piracy devices.

The scope of the proposed directive covers all services that are supplied on a Conditional Access basis: this includes traditional pay-TV, video-on-demand (including games), electronic publishing and other on-line services offered to the public on a subscription or usage-related basis.

EU countries will be required to prohibit:

- the manufacture, import, sale or possession for commercial purposes of illicit devices
- the installation, maintenance or replacement for commercial purposes, of an illicit device
- the use of commercial communications to promote illicit devices

The proposed legislation calls sanctions to be "effective, deterrent and proportional to the potential impact of the infringing activity". Furthermore, member states are called upon to ensure that service providers can bring "an action for damages and apply for an injunction and, where appropriate, for the seizure of illicit devices." The pertinent articles of the TRIPS agreement are suggested as reference points regarding sanctions. It does not call for criminal penalties and its definition of infringing activities is too narrow.

The proposed legislation must now be reviewed by the European Parliament and EU member states which will provide opportunities to try to strengthen the directive. The MPA will prepare a more detailed analysis of the text for review by the member companies. This will also serve as a basis for further action in Europe. The adopted text is available on request from the Brussels office.

BACKGROUND

The Commission has received increasing pressure from private industry and a number of member states to harmonise the legal protection of on-line services. Recognising the importance of the on-line services in the EU (see below), the Commission published a Green Paper on this issue and held a subsequent consultation meeting. This proposed legislation marks the final stage of the process. After it has passed through the various stages of the EU legislative process, member states must implement the legislation within one year.

On present trends, the Commission notes, pay TV is set to become the largest medium for consuming movies within two to three years. In the EU this has already been achieved. Using figures provided by Screen Digest, it states that EU movie spending for 1996 as compared with 1988 was:

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